

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DAVID GIROUX, derivatively on behalf of
ACER THERAPEUTICS, INC.

Plaintiff,

v.

JASON AMELLO, STEVE ASELAGE,
HUBERT BIRNER, JOHN M. DUNN,
MICHELLE GRIFFIN, LUC MARENGERE,
HARRY PALMIN, and CHRIS SCHELLING,

Defendants,

and

ACER THERAPEUTICS, INC.,

Nominal Defendant.

Case No. 1:20-cv-10537-GAO

**STIPULATION AND [PROPOSED] ORDER
REGARDING STAY OF CASE PENDING RESOLUTION OF
MOTIONS TO DISMISS RELATED SECURITIES CLASS ACTION**

Plaintiff David Giroux (“Plaintiff”), derivatively on behalf of Acer Therapeutics, Inc. (“Acer” or the “Company”), and Defendants Jason Amello, Steve Aselage, Hubert Birner, John M. Dunn, Michelle Griffin, Luc Marengere, Harry Palmin, and Chris Schelling, (collectively “Defendants” and, together with Plaintiff, the “Parties”) jointly submit this Stipulation to extend Defendants’ time to respond to the Complaint in this action until after the decision on the motion to dismiss in the related action captioned *Skiadas v. Acer Therapeutics, Inc., et al.*, Case No. 1:19-cv-06137 (the “Securities Class Action”) and stay this action during that period (the “Stipulation”), and in support thereof state as follows:

WHEREAS, on July 1, 2019, the Securities Class Action was filed in the United States District Court for the Southern District of New York alleging violations of the federal securities laws against certain defendants named in the above-captioned action.

WHEREAS, on July 2, 2019, the Securities Class Action was assigned to Judge Gregory H. Woods;

WHEREAS, on December 3, 2019, the lead plaintiff in the Securities Class Action filed his First Amended Complaint;

WHEREAS, on February 28, 2020, the lead plaintiff in the Securities Class Action filed his Second Amended Complaint;

WHEREAS, on March 17, 2020, Plaintiff filed this putative stockholder derivative action (the “Action”) on behalf of Nominal Defendant Acer asserting claims for breach of fiduciary duty, corporate waste, and violations of Section 14(a) of the Securities Exchange Act of 1934 against Defendants;

WHEREAS, on March 24, 2020, the court in the Securities Class Action set forth a briefing schedule for any motions to dismiss, which is scheduled to be completed by May 29, 2020;

WHEREAS, the parties agree that a stay of this Action pending resolution of the anticipated motions to dismiss the Securities Class Action is appropriate because it will avoid inefficiencies and duplicative efforts and will better preserve the resources of the Court and the Parties;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the parties hereto, by their undersigned counsel, subject to approval of the Court, as follows:

1. All discovery and deadlines in this Action shall be stayed until after a ruling on the motion to dismiss in the Securities Class Action.

2. Defendants hereby waive service of the complaint and any defense based upon sufficiency of service of process; provided, however, that Defendants' agreement to this stipulation and acceptance of service shall not constitute a waiver of any other defense of any of the Defendants to the claims in this Action, including but not limited to defenses based upon lack of personal jurisdiction or subject matter jurisdiction, lack of standing, improper venue, or a defendant having been improperly named.

3. A temporary stay of this Action pending resolution of any motions to dismiss in the Securities Class Action is appropriate because it will avoid inefficiencies and duplicative effort and will better preserve the resources of the Court and the parties.

4. The proceedings in this Action shall be stayed pending final resolution of all motions to dismiss directed at the pleadings filed in the Securities Class Action. The stay shall remain in effect until the later of (a) the final resolution of the pending motions to dismiss the Securities Class Action or, (b) to the extent the complaint in the Securities Class Action is amended, the final resolution of any motions to dismiss any such amended complaints in the Securities Class Action (the "MTD Resolution Date").

5. Plaintiff's and Defendants' agreement to this stipulation shall not prejudice in any respect their right to seek or oppose a further stay of this Action or to move for or oppose a transfer of venue, and Plaintiff shall not assert that any delay by Defendants in pursuing a further stay or seeking transfer on account of this stipulation as a basis for denying such relief upon the expiration of the stay contemplated herein.

6. Unless the Parties agree otherwise, Plaintiff shall have sixty (60) days from the MTD Resolution Date to file an amended complaint in this Action or otherwise designate an operative complaint.

7. The Parties shall have ninety (90) days from the MTD Resolution Date to negotiate a briefing schedule to govern defendants' deadline to answer, move, or otherwise respond to the operative complaint in this Action, and any responses and replies in relation thereto.

8. Notwithstanding the voluntary stay of this Action, Plaintiff may file an amended complaint during the pendency of the stay. Defendants shall not be required to move, answer, plead, or otherwise respond to the complaint or any amended complaint during the pendency of the stay of proceedings.

9. The Parties agree that while this Action is stayed, in the event that a mediation takes place in regards to the Securities Class Action or any other factually related shareholder action, Defendants will provide reasonable advance notice of, and in good faith consider inviting Plaintiffs to any such mediation depending on the best interests of Defendants, the needs of the case, and after soliciting the views of the plaintiffs in the Securities Class Action.

10. In the event Defendants provide any documents pursuant to a books and records inspection demand to any holder or beneficial owner of Acer stock or in any factually related derivative action ("Books and Records Production"), Defendants shall provide to Plaintiff as soon as practicable copies of all such documents after Plaintiff provides to Defendants proof of continuous and contemporaneous ownership by Plaintiff of Acer stock during the relevant time period. Plaintiff acknowledges that his right to receive the documents described above is contingent upon his execution of a confidentiality agreement governing the use and disclosure of these materials that is substantially identical to the confidentiality agreement governing any such Books and Records Production.

11. In the event any other stockholder derivative proceedings are initiated on behalf of Acer in this District based on the same set of factual allegations as alleged in this Action, this stay

shall not apply to any motions, stipulations, or any other related filings, pertaining to consolidation of such actions and/or appointment of lead plaintiff(s) and lead and liaison counsel(s).

Dated: April 7, 2020

Respectfully Submitted,

/s/ Jamie A. Levitt
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Attorneys for Plaintiff

IT IS SO ORDERED

DATED: _____, 2020

HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE